

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

WILLIE MCNAIR,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	Case No. 2:06-cv-695-WKW
)	
RICHARD ALLEN, et al.,)	
)	
Defendants/Counter-Plaintiffs.)	
<hr style="width: 40%; margin-left: 0;"/>		
JAMES CALLAHAN,)	
)	
Plaintiff/Counter-Defendant,)	
)	
v.)	Case No. 2:06-cv-919-WKW
)	
RICHARD ALLEN, et al.,)	
)	
Defendants/Counter-Plaintiffs.)	

**JOINT MOTION FOR AN ORDER PERMITTING DEFENDANTS' DISCLOSURE OF
PROTECTED HEALTH INFORMATION UNDER HIPAA**

PLEASE TAKE NOTICE that Plaintiffs and Defendants in the above-titled action, by their attorneys, jointly move this Court for an order pursuant to § 164.512(e)(1)(i) of the so-called Privacy Rule, 45 C.F.R. §§ 160, 164 (2006) (the "Privacy Rule") enacted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA"). In support of this motion, the parties state the following:

1. On December 22, 2006, Plaintiffs served Defendants with their First Request for Production of Documents ("Plaintiffs' Document Requests"), a copy of which is filed under seal as Exhibit A.

2. On February 19, 2007, Defendants served Plaintiffs with Defendants' Responses to Plaintiffs' First Request for Production of Documents ("Defendants' Responses"), a copy of which is filed under seal as Exhibit B.

3. Pursuant to the Privacy Rule, a "covered entity" is precluded from using or disclosing protected health information except as permitted or required by the Rule. 45 C.F.R. §164.502(a) (2007).

4. The Alabama Department of Corrections is a "covered entity" within the meaning of the Privacy Rule since it is a health care provider that transmits health information in electronic form for financial and administrative activities related to health care. See 45 C.F.R. § 160.103 (2006) (defining "covered entity"); 42 U.S.C. § 1320d-1 (2007) (the standards codified in the Privacy Rule apply to a health care provider who transmits any health information in electronic form in connection with certain financial and administrative transactions).

5. Protected health information under the Privacy Rule includes information "created or received by a health care provider" that "[r]elates to the past, present, or future physical or mental health or condition of an individual" and that either "identifies the individual" or "[w]ith respect to which there is a reasonable basis to believe the information can be used to identify the individual", where such information is transmitted or maintained by or in electronic form or in any other form or medium. 45 C.F.R. § 160.103(b) (2006).

5. Plaintiffs' Document Requests Nos. 70 and 71, which request documents relating to pre-execution examinations and medication of executed inmates in preparation for their execution, seek health information that is protected by the Privacy Rule. See Exhibit A, Plaintiffs' Document Requests Nos. 70 and 71; 45 C.F.R. § 160.103(b) (defining "protected health information").

6. Section 164.512(e)(1)(i) of the Privacy Rule provides that a “covered entity may disclose protected health information in the course of any judicial or administrative proceeding: (i) [i]n response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order.” 45 C.F.R. § 164.512(e)(1)(i) (2006).

7. Absent a court order, Defendants have objected to producing information that is responsive to Plaintiffs’ Document Requests Nos. 70 and 71. See Defendants’ Responses to Plaintiffs’ Document Requests Nos. 70 and 71, Exhibit B.

WHEREFORE, the parties move this Court for an order permitting Defendants to disclose any protected health information responsive to Plaintiffs’ Document Requests Nos. 70 and 71, and for such other and further relief as the Court deems appropriate.

Respectfully submitted,

Date: March 1, 2007

/s Heather K. McDevitt

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CERTIFICATE OF SERVICE

I certify that on March 1, 2007, a copy of the foregoing was filed electronically with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: J. Clayton Crenshaw and James W. Davis.

/s/ Stephanie Cohen
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EXHIBIT A
FILED UNDER SEAL

EXHIBIT B
FILED UNDER SEAL